

PREINVESTIGATION

10010–10030 *Initiation of Cases*

10010 *Objective:* To the end that appropriate action consistent with the Act will eventually be taken, the filing of a charge is a condition precedent to and initiates the investigation of an unfair labor practice.

10012 *Prefiling Assistance*

10012.1 *Determination Whether Situation Is Covered by the Act:* Approached by an individual who believes he/she has a case, complaint, or grievance that is cognizable under the Act, the Board agent should explore the situation to determine initially whether, provided the proffered facts are accurate, the matter is one that is covered by the Act.

10012.2 *Situation Not Covered:* If the situation is clearly not covered by the Act, the Board agent should point out this fact and discourage the filing of a charge. But the individual should be advised that he/she still has the right to file a charge if he/she wishes. In drafting such a charge, the specific conduct about which the individual complains should be used. As in all situations, the individual should be specifically advised of the 6-month statute of limitation set forth in Section 10(b) of the Act.

(If a charge is filed under these circumstances, it should be processed just as any other.)

Even though no charge is filed under such circumstances, a brief memo of the salient facts should be prepared for the regional records.

10012.3 *Report on Inquiries:* Each professional should keep a running record of time spent during the month in rendering prefiling assistance and answering inquiries of public and other Government agencies. Such record is maintained on Form NLRB-4536.

At the conclusion of an interview the professional should enter the date, check the type of inquiry, note the subject of inquiry and name of individual, check the classification of person making inquiry, and note the result of the inquiry. If a charge is filed, the case number should be noted. The time spent should be noted in the last column of the report.

At the end of the month all reports are submitted to the office manager who will compute and enter on the regional staffing report the total time spent by professionals on prefiling assistance.

10012.4 *Situations Covered by the Act:* If an individual seeking prefiling assistance from the Agency relates a state of facts that, if true, indicates that there may have been a violation of the Act, the individual should be advised of the right to execute a charge before a formal affidavit is procured or other steps taken. The individual should be told that our processes are invoked by the filing of a charge.

(This is not to be construed as *requiring* anyone to file a charge before information is given the individual. *Nor is it to be utilized as a device for an unwarranted buildup of “statistics.”*)

Upon the filing of such charge, the Region, having procured a docket number, should immediately commence the investigation. Thus, absent extenuating circumstances, the Board agent rendering prefiling assistance, or another Board agent, should take an initial in-depth affidavit at the time the charge is filed in order to provide for expeditious processing of the case. If after the affidavit has been taken, it appears, and the charging party becomes convinced, that further proceedings are not warranted, a withdrawal request may be solicited, received, and processed without service on or notification to other parties. Except where the charge has been filed contrary to the counsel of the Board agent such withdrawals should be rare since the precharge interview should be of sufficient thoroughness to disclose weaknesses in the case to the individual before the charge was docketed. (See sec. 10012.2.) If it appears that the charge needs “correction,” a new—not an amended—charge may be substituted.

10012.5 *Information as Contrasted with Advice:* In any case, requests for information may be honored only to the extent that they seek information, as contrasted with advice, concerning rights, obligations, and general contents of the Act. Answers should be succinct, and they must include all reservations that are necessary in a field as fluid as the area covered by the Act. At some point in the conversation the statement should be made that “I cannot, of course, give advice, cannot give opinions, cannot commit the General Counsel or the Board.” Extended correspondence should be discouraged and, if advice is persistently sought, resort to non-Board counsel should be suggested. Under no circumstances should specific counsel be recommended.

Regional personnel should not give advisory opinions as to the legality of given conduct or contract clauses.

10012.6 *Assistance in Preparation:* Assistance in the preparation of a charge may be rendered to the filing party to the extent that such assistance involves the furnishing of forms, reasonable clerical/stenographic assistance, and wording of the charge itself.

For information as to contents of charges, see section 10020.

10012.7 *Assistance in Remedying Defects:* If charges or amendments thereto are received in the Regional Office and contain errors on their face (e.g., a charge that uses the wrong numbers of the sections alleged to have been violated or that incorporates supporting affidavits by reference), assistance may be rendered in remedying the defects.

In such cases, docketing may be delayed pending a prompt communication with the charging party. If the 10(b), 6-month period is involved, no delay should be incurred on this account. If the filing party insists that the charge be docketed as is, his/her wishes should be honored.

10014 *Types of Unfair Labor Practice Cases:* A case initiated by the filing of a *charge* (herein referred to generally as a C case) takes the form of:

- a. A CA case, alleging violations of one or more subsections of Section 8(a) of the Act by an employer or its agents
- b. One of five types of charges against labor organizations or their agents:
 1. A CB case, alleging violations of one or more of subsections 8(b)(1), (2), (3), (5), or (6) of the Act
 2. A CC case, alleging violations of one or more of subsections 8(b)(4)(i) and/or (ii)(A), (B), or (C) of the Act
 3. A CD case, alleging violations of Section 8(b)(4)(i) and/or (ii)(D) of the Act
 4. A CP case, alleging violations of one or more subsections of Section 8(b)(7) of the Act

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5. A CG case, alleging violations of Section 8(g) of the Act (NOTE: Health care cases arising under all sections of the Act other than Section 8(g) should be docketed in the same manner as any other case.)
 - c. A CE case, alleging violations of Section 8(e) of the Act by a labor organization or its agents and/or by an employer or its agents.

10016*Who May File:*

Any person or organization may file a charge.

Whenever a charge is filed involving more than one discriminatory discharge, all of which arise out of a related situation, separate charges may be taken on each discharge, but should carry a suffix rather than a new number.

NOTE: The charge should clearly indicate *the party filing it*, as opposed to the representative *who signs it*.

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Where To File: A charge is normally filed, in person or by mail, at the Regional Office in the Region in which the unfair labor practices are alleged to have occurred. If they took place, allegedly, in more than one Region, the charge may be filed in any of such Regions.

A charge may be filed by handing it to a Board agent away from the Regional Office, in which case the date of receipt should be inserted and the Regional Office notified for assignment of a case number and Board agent.

(For filing with the General Counsel see Sec. 102.33 of the Board's Rules and Regulations.)

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What To File: Forms for filing charges are furnished by the Regional Offices:

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10020–10020.2

NLRB-501	Charge Against Employer (CA)
NLRB-508	Charge Against Labor Organization or its Agent (CB, CC, CD, CG, CP)
NLRB-509	Charge Alleging Unfair Labor Practices Under Section 8(e) of the Act (CE)

Reasonably similar facsimiles are acceptable, but their use should be discouraged. The forms are self-explanatory with respect to the information called for. See Section 102.12 of the Rules and Regulations.

A minimum of an original and four copies of a charge should be filed. Also, in the case of a charge where more than one respondent is named, a copy should be filed for each additional charged party.

Where Board personnel assist in preparing charges, wording should be selected that is specific enough to inform charged parties of the alleged violations and that is broad enough to cover related unfair labor practices, if any.

(With respect to filed charges containing patent errors, see sec. 10012.7.)

10020.1 *Allegations in General:* In all C cases, the facts alleged in a charge to constitute the unfair labor practices should be set forth with some specificity but should not contain detailed evidentiary matter.

A charge should not incorporate, by reference, affidavits or other documents submitted in support of the charge. Where discrimination is alleged, all known discriminatees should be named. Where the names of all are not known, the charge should expressly state that the discriminatees include, but are not limited to, those named.

10020.2 *CC or CD Allegations:* CC or CD charges should indicate whether the alleged violation is under Section 8(b)(4)(i) and/or (ii)(A), (B), (C), or (D). Separate CC and CD charges should be filed against each different union respondent and its agents. Allegations that a union has engaged in a *number of* 8(b)(4) incidents, even though they involve a number of secondary employers, should be contained in a single charge.

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10020.3 *CE Allegations:* In CE charges, the allegations should specify whether the contract involved is written or implied, the date on which the contract was entered into, and the parties thereto.

10020.4 *CP Allegations:* In CP cases, it is preferable that the charges be specific with respect to the subsection or subsections of Section 8(b)(7) alleged to be violated. However, if the charging party insists on filing a general 8(b)(7) charge without specifying the subsection or subsections violated, the charge should nevertheless be processed.

Following are sample allegations for CP charges:

On or about _____, the above-named labor organization threatened to picket [name of employer], an employer.

- or -

Since on or about _____ the above-named labor organization has caused various persons to picket and has engaged in picketing of [name of employer], an employer, at its premises at _____, and at [other locations] with an object to force and require said employer to recognize and bargain with said labor organization, and to force and require the employees of said employer to accept and select such labor organization as their collective-bargaining representative, notwithstanding that such labor organization is not currently certified as the representative of the employer's employees, and

under (A)

notwithstanding that the employer has in accordance with the Act lawfully recognized another labor organization, to wit: [name of labor organization recognized] of [address], and a question concerning the representation of the employer's employees may not appropriately be raised under Section 9(c) of the Act.

under (B)

notwithstanding that within the preceding 12 months a valid election under Section 9(c) of the Act has been conducted among the employer's employees.

under (C)

such picketing has been conducted without a valid petition having been filed under Section 9(c) of the Act within a reasonable time from the commencement of such picketing.

10022 *Assignment of Case:* After a case has been docketed, it is assigned for investigation to a Board agent.

(On attorney assignments, see also sec. 10062.)

Assignments should be made with a view toward the most efficient and the most expeditious handling of cases. Among the factors that should be considered in the assignment of cases are the following:

- a. Complexity of the case, relative to the respective skills of Board agents
- b. Availability of Board agents, immediate or prospective—state of commitments and travel plans
- c. Respective workloads of Board agents
- d. Location of alleged unfair labor practices, relative to cases presently assigned respective Board agents
- e. Familiarity with case (e.g., because Board agent received charge initially or because he or she has handled prior cases involving same respondent)
- f. Regional Office specialization of work
- g. The priority nature of the case.

Every effort should be made to assign a case so that a full-scale investigation can be begun immediately by the Board agent to whom the case will be ultimately assigned. Assignment to Board agents present in the office on the day of assignment will assist in the attainment of this goal. Alternatively, preliminary steps should be taken by someone in the office at the time of filing.

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A case may be assigned to a Board agent who is out of town, by telephone or telegram, so that he/she may begin investigating immediately or make necessary arrangements for an early investigation.

10024 *Special Notice Intra-agency:*

- a. Upon the docketing of any CC, CD, CE, or CP case, expeditious handling is required. See sections 10200–10248 for notification and clearance required by Division of Operations Management for each type of case.
- b. If an R case or a UD case is pending before the Board, the filing of any *charge* is to be reported to the Executive Secretary on Form NLRB-511, Notice of Charge Filed, provided:
 1. The charge involves the employees, or some of the employees, involved in the R or UD case, and
 2. The charging party is one who would normally appear on the ballot in the R or UD case, or is the employer, or is the petitioner in the R or UD case.

10024.1 *Repeat Violators; New Charge Filed (Contempt):* When a charge is filed against a respondent named in, or subject to, an outstanding court judgment, the question of possible contempt action should be examined.

If the charge is meritorious and the allegations are arguably encompassed by the provisions of the judgment, the case should be referred to the Contempt Litigation Branch for consideration. (See Compliance Manual, secs. 10509 and 10510.) The Region should not proceed administratively to issue complaint or to settle the case without the authorization of the Contempt Litigation Branch (sec. 10509.4).

10024.2 *Notification of Collateral Court Suits:* Collateral suits in Federal or state courts including bankruptcy actions against or involving the Agency or its personnel are under the supervision of the Assistant General Counsel, Special Litigation (see sec. 11750.1). Often these suits require consultation with the General Counsel and the Board Members in some types of cases, to formulate a uniform Agency position in all the Regions. This is particularly true where request is made that the Board

intervene in private litigation or bring a Federal court action to protect its jurisdiction.

Therefore, whenever it becomes known that a request to intervene in private litigation may be made, or a collateral suit against the Agency is contemplated, including bankruptcy actions, telephone the information immediately to the Assistant General Counsel, Special Litigation, Appellate Court Branch (Regions should notify their Assistant General Counsel of these actions). As received, pleadings and papers should be forwarded by the quickest means to: *Office of the General Counsel, National Labor Relations Board, Attn: Assistant General Counsel, Special Litigation, Appellate Court Branch, Division of Enforcement Litigation, Washington, D.C.*

10024.3 *Interim 8(a)(5) Charges:* Where a new 8(a)(5) charge is filed after the Board has issued a general bargaining order with which the employer has not complied, referred to herein as an “interim” charge, alleging unlawful conduct such as the refusal to furnish information, unilateral changes, etc., the following procedures should be followed:

- a. Interim 8(a)(5) charges that simply allege a continuation of the refusal to recognize and bargain with the union do not warrant the issuance of a new complaint. As the Board pointed out in *Canton Sign Co.*, 186 NLRB 237 (1970), no useful purpose can be served by an order based on such an interim charge because the employer is already subject to an order to bargain. In these circumstances, enforcement of the Board’s previous bargaining order will provide an early and effective remedy for the violations alleged in the interim charges.

- b. If the interim charge is meritorious and alleges a violation that would require a remedy beyond the bargaining order in the first case (e.g., furnish information, rescind a unilateral change, make whole employees who suffered a detriment by reason of such change), then a new complaint should issue. However, if the respondent's sole defense to the interim charge allegations is that the Board's decision and order in the first case was erroneous, the Region may suggest to the respondent that litigation of the interim allegations can be avoided by a stipulation. Under such a stipulation, the respondent would agree to remedy the interim violations if the respondent's position is ultimately rejected in the first case. Such a stipulation can be in the form of an informal or a formal settlement agreement, at the discretion of the Region. In the former, the respondent would agree with the Regional Director to take the remedial steps immediately after the court enforces the Board's order in the first case. In the latter, the respondent would agree that a Board order and court judgment providing such remedial relief can be entered immediately after the court enforces the Board's order in the first case. For its part, the Region would agree to dismiss the charges if the Board's position is ultimately rejected in the first case.

10025 *Summary Judgment Cases; Expeditious Processing:* Although special problems may exist warranting exceptions, normally complaints in summary judgment cases should issue within 14 days from the filing of the charge, and Motions for Summary Judgment should be filed within 20 days after issuance of complaint.

10025.1 *Identifying Potential Summary Judgment Cases:* All Board agents, and particularly supervisory personnel assigning or otherwise processing incoming cases, must be alert to recognize potential summary judgment cases and take appropriate steps from the outset to insure that the expedited procedures prescribed in section 10025.2 are met.

10025.2 *Potential Summary Judgment Cases; Procedure:* Once a summary judgment case is identified, and the investigation establishes that the respondent is refusing to recognize and bargain with the charging union in order to test the certification, the complaint should be issued promptly. Since Motions for Summary Judgment follow the same general pattern and require similar attachments, such motions may be drafted prior to receipt of the respondent's answer. Thus, in many cases, a Region should be able to file its Motion for Summary Judgment once the respondent

files its answer if the answer does not raise issues requiring a hearing, or further comment in the motion.

10026 *Communications with Parties:* After a copy of the charge together with the initial communication has been served on the parties, and an attorney or other representative has entered an appearance on behalf of a party, copies of all further documents served pursuant to Section 102.111 of the Board’s Rules and Regulations, with the exception of subpoenas, will be served on the attorney or representative of record in addition to the party. (But see sec. 10040.6 for designation of agent for exclusive service.) If a party is represented by more than one attorney or representative, service on any one of such persons in addition to the party satisfies the requirements of Section 102.111, but, as a matter of courtesy, an effort should be made to serve all counsel or representatives who have entered an appearance on behalf of the party. (See also sec. 11840.)

Copies should not be marked “courtesy” or otherwise distinguished from the original except as copies.

It should be particularly noted that copies of the following documents and communications should be sent to the party and to the attorney or representative of record:

- a. Notices and orders issued in connection with unfair labor practice hearings, representation case hearings, and 10(k) hearings
- b. Regional Director’s decisions, reports, and supplemental decisions
- c. Dismissal letters in unfair labor practice cases and representation cases
- d. Letters approving withdrawal requests of unfair labor practice charges or representation petitions
- e. Closing compliance letters
- f. Consent election agreements and stipulations for certification upon consent election

g. Representation case certifications.

Where arrangements for an election have been agreed to by the parties with full participation by counsel or representative, notices of election should be sent directly to the parties with copies to counsel or representative. By the same token, the letter requesting the *Excelsior* list, which accompanies a copy of the approved consent or stipulated election agreement, may be sent to the employer, copy to counsel or representatives. The *Excelsior* list supplied by the employer should be sent by the Region directly to the petitioning and intervening parties involved.

In addition, copies of correspondence that confirm some previously agreed to arrangement or appointment may be sent to the parties involved.

Compliance communications are also covered by the foregoing instructions. However, after the requirements for compliance have been worked out and the respondent has advised us of its intention to comply, the notices that may be required, whether pursuant to an administrative law judge decision, Board order, court judgment, or settlement agreement, the request for certification of posting, and the instructions concerning details of compliance can be sent directly to the parties with copies to counsel or representatives.

All other communications, both oral and written, should be with or through only the attorney or representative of record. However, whenever an attorney, representative, or party requests that copies of all written communications be sent to the party, or has authorized that a party or person be contacted directly, such request and authorization should be honored.

Where special circumstances might warrant a departure from the foregoing instructions, clearance should be obtained from the Assistant General Counsel before undertaking any direct communication with a party contrary to these instructions.

10030 *Case Filing Docket:* All Regional, Subregional, and Resident Offices will maintain a daily case filing docket in a manner and location readily available for inspection and copying by members of the public.

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Entries should be made on Form NLRB-4706, Case Filing Docket, for each case docketed; numerical sequence is not required but a separate sheet should be maintained for each day. Basic entries for each case are the name of the case, location, filing party, and case number.

INITIAL NOTICES

10040 *Initial Notices and Service*

10040.1 *Acknowledgment of Receipt:* Immediately upon docketing of a charge, a written acknowledgment of the filing, naming the field examiner or attorney assigned, is sent to the charging party. Copies of Forms NLRB-4541, 4701, and 4813 should be enclosed.

(For procedure to be followed with respect to charges filed *and withdrawn* before assignment or service has been effected, see sec. 10012.4.)

10040.2 *Obtaining Facts from Charging Party:* If the charging party has not submitted, at the time of or prior to the filing of the charge, a written account of the facts and circumstances surrounding the matters complained of in the charge (giving details such as dates, names, and places, telling of the account, and attaching whatever statements in support of the allegations that were then available), the initial letter should contain a request that such information be submitted by *return mail*. In statutory priority cases such a request may also be made orally or by telegram; the nature and form of the request should be tailored to fit the urgency of the situation. Where the charging party is an individual, normally, it would be a better practice to arrange for the Board agent to meet with him/her and take the statement.

10040.3 *Initial Letter to Charged Party and Service of Charge:* A letter giving the name of the Board agent to whom the case has been assigned, advising of the right to counsel, and inviting the cooperation of the charged party is sent by the Regional Director to the charged party. Copies of Forms NLRB-4541, 4701, and 4813 should be enclosed.

The letter should specifically request that the charged party submit his/her version of the facts and circumstances that form the basis of the charge.

Except in CD cases, a copy of the charge enclosed with the letter is sent by registered mail, return receipt requested. Where more than one respondent is named, each is served.

In CD cases a copy of the charge is served on *all* parties with “Notice of Charge Filed” (registered mail, return receipt requested) (sec. 10209).

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Normally, the initial letter to the employer should request “commerce” information (sec. 11708).

10040.4 *Notification to Other Parties:* In addition to the initial contacts with the charging party and the charged party described above, notification of the filing of the charge and a copy of the charge should be served by registered mail on certain other parties, as the circumstances may require:

For example:

- a. Any labor organization alleged to be dominated or assisted in an 8(a)(2) charge
- b. Any employer involved in a CC or CD case
- c. In an 8(b)(2) case, any employer whom, allegedly, the charged union has been causing or attempting to cause to violate Section 8(a)(3).

And, in addition to charged parties:

- a. Any party to a collective-bargaining contract the validity of which is being attacked
- b. In a CE case, a party to such a contract should be served even though no charge has been filed against it.

The letter of notification, “tailored” to fit the situation, should request a written account of the pertinent facts and circumstances, as known to the addressee. All parties should be advised of the right to be represented by counsel and sent copies of Forms NLRB-4541, 4701, and 4813.

(To the extent that the identity or interest of any such party may not be known at the time a charge is filed, the notification and service described above should be effected as soon as possible after the identity or interest comes to the attention of the Regional Office.)

10040.5 *Right to Counsel and Notice of Appearance:* The initial letters to the parties should be accompanied by Forms NLRB-4541 and NLRB-4701. Form NLRB-4541 advises participants of the right to be represented by counsel and summarizes the Board’s procedures with respect

to the charge. Form NLRB-4701, Notice of Appearance, is for the convenience of parties to notify the Agency of the name and address of counsel or other representative on their behalf. The form may be used at any stage of the case.

10040.6 *Designation of Representative as Agent for Service of Documents:* A party may designate the representative who has entered an appearance on his behalf in a Board proceeding as his agent for the exclusive service of all documents with certain limited exceptions.

Form NLRB-4813, enclosed with the initial communication to the party, is the notice that the party must file to make the designation. The notice *must be signed by the party*. In the event the party is a corporation or other form of business entity, the designation must be made by someone in an official capacity capable of binding the party. Regional Office personnel should not solicit execution of the designation.

When the form is filed its terms will control the service thereafter. Only charges, amended charges, and subpoenas, where so directed, will be served on the party. Copies of such documents served on the party subsequent to the initial charge, subpoenas excepted, will also be served on the representative. All other documents and written communications will be served only on the representative designated as agent. When forms are not filed, service will continue to be made in accordance with section 10026.

The designation, once filed, will remain valid until a revocation in writing is filed with the Regional Director. The designation, as well as any subsequent revocation, should be treated as part of the formal file in the same manner as Form NLRB-4701, Notice of Appearance. If the case is no longer under Regional Office control when such a designation or revocation is filed, the Region should immediately notify the Division or Office in Washington in which the case is pending.

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10040.7 *Postal Service Cases; Representatives Authorized for Service of Certain Documents:* Postal Service representatives are designated agents of the Postal Service authorized to receive exclusive service of all charges. Service of charges should be made on these agents and constitutes service within the meaning of Section 102.114 of the Rules and Regulations. This designation shall remain valid until a written revocation of it, signed by an appropriate official of the U.S. Postal Service, is filed with the General Counsel.